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6 Attorneys for Plaintiff  
FREDA PHILOMENA  
7 D'SOUZA  
8  
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10 **UNITED STATES DISTRICT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12

13 FRED A D'SOUZA,

14 Plaintiff,  
15

16 v

17 LOWE'S HOME CENTERS, LLC,  
18 LOWE'S COMPANIES, INC.,  
LOWE'S, DOES 1-10, Inclusive

19 Defendants.  
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**Case No.:**

**COMPLAINT FOR DAMAGES,  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**[42 U.S.C. Section 1981 –  
Violation of Federal  
Civil Rights]**

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff FREDA PHILOMENA D'SOUZA ("Plaintiff," or "FD") hereby  
3 files the following Complaint and states and alleges as follows:

4 **JURISDICTION AND VENUE**  
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6 1. Jurisdiction of the federal court exists pursuant to 28 U.S.C. Section  
7 1331 and 28 U.S.C. Section 1343(a)(3). This action arises under the laws of the  
8 United States, specifically 42 U.S.C. Section 1981.  
9

10 2. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(h)  
11 in that the claims arose in this District, the Plaintiff and Defendants operate and  
12 reside in this District.  
13

14 **PARTIES**  
15

16 3. Plaintiff is an individual who resides in San Clemente, CA.

17 4. Plaintiff alleges that the Defendant LOWE'S HOME CENTERS, LLC,  
18 ("LOWE'S LLC") is and was at all times herein mentioned a North Carolina limited  
19 liability Company whose head office and principal place of business is in  
20 Mooresville, NC.  
21

22 5. Plaintiff alleges that the Defendant LOWE'S COMPANIES, INC.  
23 ("LOWE'S CORP") is and was at all times herein mentioned a North Carolina  
24 Corporation whose head office and principal place of business is in Mooresville, NC.  
25

26 6. Plaintiff alleges that the Defendant LOWE'S is a branch of LOWE'S  
27 LLC and LOWE'S CORP. that operates as store number 1050 ("LOWE'S 1050")  
28

1 and is located at 907 Avenida Pico, San Clemente, CA 92673.

2  
3 7. The true names and capacities, whether individual, corporate, associate  
4 or otherwise, herein named as Does 1 through 10, and persons heretofore  
5 unknown involved in the actions taken against the plaintiff are unknown to her at  
6 this time. Plaintiff is informed and believes and based thereon allege that each of  
7 the DOE defendants are responsible in some manner for the events herein referred  
8 to, and that plaintiffs' injuries and damages as herein alleged were proximately  
9 caused by those defendants. Plaintiff sues said defendants by such fictitious names  
10 on the grounds that the true names and capacities of said defendants are unknown  
11 to them at this time. Plaintiff will amend this complaint when the true names and  
12 capacities of said Doe defendants are ascertained. Each reference in this complaint  
13 to "defendant," defendants," or a specifically named defendant also refers to  
14 defendants sued under their fictitious names.  
15  
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18

19 **FACTS COMMON TO ALL CLAIMS**  
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21 8. The defendants Lowe's Corp. and Lowe's LLC (collectively the  
22 "Company") are an American retail company specializing in home improvement.  
23 headquartered in Mooresville, NC, the company operates a chain of retail stores  
24 in the United States and Canada.  
25

26 9. In 2020, the Plaintiff became an employee as a sales associate at  
27 Lowe's 1050.  
28

1  
2 10. From the inception of Plaintiff's employment at Lowe's 1050,  
3 store management and employees discriminated and retaliated against her on the  
4 basis of Plaintiff's Asian-Indian nationality, in addition to her being a 62 year old  
5 female who also suffers from permanent disabilities.  
6

7  
8 11. On October 12, 2020, Lowe's 1050 terminated Plaintiff from her  
9 Employment, and as a result of the discrimination and retaliation that Plaintiff  
10 suffered from the store management and employees, on or about August 5, 2021,  
11 Plaintiff was forced to file a charge of discrimination with the EEOC, which still  
12 remains pending. A copy of the charge of discrimination that Plaintiff filed  
13 with the EEOC that explains in detail the specific factual predicates that form the  
14 basis of this lawsuit is attached hereto as Exhibit "A".  
15  
16

17 Based on the above facts, Plaintiff alleges the following claims:  
18

19 **FIRST CLAIM FOR RELIEF**

20 **(Violation of 42 U.S.C. Section 1981 by Plaintiff Against All Defendants)**

21 12. Plaintiff alleges and incorporates herein by reference each and every  
22 allegation contained in paragraphs 1-11.  
23

24 13. In taking the actions described in paragraphs 1-11, the defendants'  
25 actions, violated 42 U.S.C. Section 1981.  
26

27 14. As a proximate result of the foregoing actions of the defendants, and  
28 each of them, Plaintiff has suffered, and continue to suffer extreme hardship and

1  
2 and damages, which include but are not limited to economic and non-economic  
3 damages. The amount of damages will be established according to proof at trial but  
4 at present Plaintiff believes that such damages \$10,000,000.00. Plaintiff is also  
5 entitled to appropriate declaratory and injunctive relief against the defendants, and  
6 each of them. Plaintiff is also entitled to her reasonable attorney's fees pursuant  
7 to 42 U.S.C. Section 1988.  
8

9  
10 WHEREFORE, Plaintiff prays judgment against the Defendants, and  
11 each of them, as follows:

12 **FIRST CLAIM FOR RELIEF**

- 13  
14 1. For damages according to proof at trial but not less than  
15 \$10,000,000.00;  
16  
17 2. For declaratory and injunctive relief;  
18  
19 3. For attorney's fees;

20 **FOR ALL CLAIMS OF RELIEF**

- 21 4. For costs of suit;  
22 5. For such other and further relief as the Court deems proper.  
23

24 Dated: December 30, 2022

LAW OFFICES OF FRANK A. WEISER

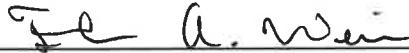
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26 By: Frank A. Weiser  
27 FRANK A. WEISER, Attorney for  
28 for Plaintiff FREDA PHILOMENA  
D'SOUZA

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial pursuant to the Federal Rules of Civil Procedure,  
Rule 38, and the Seventh Amendment of the United States Constitution.

Dated: December 30, 2022

LAW OFFICES OF FRANK A. WEISER

By:   
FRANK A. WEISER, Attorney for  
for Plaintiff FRED A PHILOMENA  
D'SOUZA

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**EXHIBIT "A"**

<b>CHARGE OF DISCRIMINATION</b> This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: _____ <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC		Agency(ies) Charge No(s): _____ _____ and EEOC	
Name (last, first, middle initial) <b>Freda D'Souza</b>		State or local Agency (if any) _____		Home Phone (incl. Area Code) <b>(949) 374-4944</b>	
Street Address <b>177 Avenida Cabrillo</b>		City, State and ZIP Code <b>San Clemente, CA 92672</b>		Date of Birth <b>11/09/1957</b>	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two are named, list under PARTICULARS below.)					
Name <b>Lowe's 1050</b>		No. Employees/ Members <b>250</b>		Phone No. (incl. Area Code) <b>(949) 589-5005</b>	
Street Address <b>907 Avenida Pico</b>		City, State and ZIP Code <b>San Clemente, CA 92673</b>			
Name _____		No. Employees/ Members _____		Phone No. (incl. Area Code) _____	
Street Address _____		City, State and ZIP Code _____			
DISCRIMINATION BASED ON (Check appropriate box(es)) <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input checked="" type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> AGE <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify) _____				DATE(S) DISCRIMINATION TOOK PLACE: Start: <b>4/12/2020</b> End: <b>Oct 12, 2020</b> <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheets.) <b>The complainant, Freda D'Souza, states that her former employer Lowe's discriminated against her on the basis of her sex (female), age (62), permanent disabilities and harassment from her fellow employees. A detailed description of the events of discrimination is attached hereto.</b>					
I want this charge filed with both the EEOC and the State or local Agency. If any, I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.				SIGNATURE - When necessary for State or Local Agency Requirements I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT _____ SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE Month, Day, Year:	
08/05/21 <i>Freda D'Souza</i> Complainant Signature				_____ Signature of Agent	



In a nutshell, Lowe's 1050 ASM's treatment of me, Freda DSouza, associate 3266285 in the Outside Lawn and Garden (OLAG) department and store management's failure to address scheduling, harassment and other issues I have repeatedly put in writing are discriminatory based on my sex (female), age (62) permanent disabilities, and harassment from four fellow associates.

The training room at Lowe's 1050 displays this poster:

***"As part of creating an inclusive culture and positive working environment, we want you to voice your concerns, raise issues and make suggestions. We will continue to work hard to make sure you feel valued and to provide you with opportunities to have your voice heard."***

I can sincerely say that has not been my experience as sales associate at Lowes 1050 in San Clemente.

In my six months, I delivered outstanding customer service, offered ways to reduce shrink, offered solutions to eliminate checking in dead, dying or diseased plants. I repeatedly asked store management in writing for plants, hardscape and soil that Home Depot carries that Lowe's customers repeatedly ask for (just ask former Store Manager Mike about my repeated pleas) I.e. decomposed granite, worm casting/compost) Dr. Earth citrus, palm and cactus fertilizer.

Nestor Perez, the assistant store manager who is/was in charge of OLAG, never looked me in the eye except during my review in July. The only times he spoke to me were to sweep under the planter pot racks and to zone the "killer" aisle – weed control products.

I filed a complaint with Lowe's corporate HR that Nestor had me load 25 bags of mulch into a customer's vehicle while he was on a forklift and had an able loader "spotting" for him. When I asked for his help and volunteered to spot while the male associate loaded the 25 bags of mulch, Nestor yelled from the forklift, "Freda, can you please help us out here and load the mulch?"

Several full-time employees said, "Nestor likes store associates young, pretty and stupid."

Chris and Gio have told fellow associates that I don't "need to work" because I'm a multi-millionaire with multiple properties. Several associates told me ASM's had told them "She's a rich bitch but she knows her shit." "Don't know why she wants to work for minimum wage."

The answer is that the minimum wage job helped me feed 43 local seniors during Covid.

No Incident report filed for spider bite in the garden center

On October 11, 2020 a brown widow spider bit me on my right arm while zoning the Monrovia coneflowers on an end cap in Lowe's 1050 garden center. I notified scheduling manager Angela Robinson and fellow associates because I felt electric shock in my head and arm and my mouth bled profusely. The spider bit me in five places before I could kill it. I used paper cleaning rags to wipe my mouth, wrapped the dead spider in a Kleenex and went to urgent care which said they couldn't accommodate me and that I should go to Mission Hospital.

John, an assistant manager at the Ralph's store is a spider expert. I showed him the big orange, yellow and brown spider and he said it was a brown widow and that I should have the poison sucked out ASAP. Local nurse Donna Vidrine did that but my right arm from my wrists to upper elbow was swollen, discolored and the arm felt partially paralyzed for about three weeks.

Lowe's did not take an incident report.

### Retaliation

The next day, on October 12, 2020, I clocked in at 12 noon to work my shift and took a 15-minute break at 3:55 pm. When I clocked in scheduling manager Angela Robinson asked me to do AP4Me. OLAG was very busy and understaffed so I asked if I could do it before I left for the day.

I spoke with him in the training room at 3:55 p.m. and said I had zero hours on the schedule again; could he please let me know my hours going forward for the three-week period Lowe's posts its schedule. He said, "You are working till close, right? I'll check and get back with you." ASM Gio was eating a snack in the training room during our conversation.

After that, I kept stocking new plants on OLAG tables and returned calls to two customers on my cell phone – Shawn regarding fig trees (left voicemail that there were 3 left located outside with the avocado trees next to the citrus) and Don Howard looking for a Black Cherry Bush (I left him a voicemail that there were four Monrovia topiaries \$99 each and let him know their location in OLAG).

As I was walking to clock out for my lunch break, McKenna from Lowe's corporate human resources department called me at 4:51 pm, so I went to the back of the store so we could talk away from the noise of the forklift.

Don Howard called me back while I was speaking with McKenna to ask me to photograph the topiaries.

I was near customer service to clock out for my lunch break at 5:20 p.m. when I was paged to help customers choose plants for their dry fountain. So I circled

back since associate Jerry had gone on break while I was on the call with McKenna and I was the only customer service associate in OLAG.

I showed the couple several full sun options and suggested Monrovia grass, Monrovia mounding coreopsis and Monrovia African daisies in fall colors, plus six planter pots. They were delighted and spent \$300+.

At 5:35 p.m. I was heading to find an ASM to let them know why I had gone over my five hours before clocking out.

While I was clocking out for lunch, DJ, the store manager asked me where Angela Robinson was. I said I had seen her at 12 noon when I clocked in and she had asked me to do the AP4Me but I hadn't seen her since. I had approached DJ at least seven times regarding Nestor giving me a great review but giving me reduced hours to no hours.

After I clocked out, Nestor approached me and asked me if I could "step inside Angela's office for a minute." ASM Chris came in and Nestor shut the door.

DJ, and ASM's Max and Gio were outside in the training room during this time.

Nestor said: "Remember the conversation we had at your review about you being seasonal? Well, our season is over and today will be your last day. We will pay you for a full day. You will leave now. You are eligible for rehire next season."

I said, "Nestor, this is really unfair. You have hired several seasonal associates after I was hired and you have given them 32-40 hours of work while taking me off the schedule when I'm your top producer."

He said, "Ma'am, thank you for everything you have done for us. We really appreciate it."

I repeated my statement. "Nestor: how is this fair that you claim I'm a seasonal employee and you keep hiring new seasonal employees and a new full time employee without an offer to me?"

With ASM Chris as a witness, I also voiced his giving hours to new hires in lieu of giving me zero hours. Nestor had no defense.

Nestor said, "Ma'am, we are talking about you, not other seasonal associates."

Nestor then said "Ma'am, Do you have anything in your locker? I said, "Yes."

He said: "I'll wait with you till you empty your locker and I'll escort you out."



I emptied my locker, turned in my red vest, and he escorted me to the store front door.

Nestor Shanghai-d me at my lunch break at 5:35 p.m. to end my seasonal employment when just two hours earlier he had promised to get back to me about my upcoming schedule. Nestor's "hurry up and get rid of her" technique – after promising to give me the next three weeks schedule two hours earlier – speaks clearly of retaliation and panic. So sad and disappointed to be treated this way when I have served Lowe's and our customers with a servant's heart.

The entire incident felt like being "terminated" for no reason except doing what Lowe's says on its signs and in its new hire training. And challenging Nestor to be exceptional.

#### No follow-up from Lowe's management or Lowe's corporate HR

McKenna from Lowe's corporate HR stated 5:10 p.m. on October 12, 2020 that she would speak with current store manager DJ, former store manager Mike, and my immediate supervisor Dustin who is now working night shifts. She promised to follow up with me on October 13, 2020 but never did.

I didn't receive a response from Nestor or DJ to the letter I wrote 10.7.20 that I forwarded to Lowe's corporate HR. I was not paid for the hours Nestor yanked me off the schedule when my Mom was in ICU and my 30-year old second-born twin son Trevor was hit by a car while riding his bicycle from work in downtown Indianapolis.

Angela Robinson offered fellow seasonal associate Karla Arthur paid family leave when she had to go back to Texas to take care of her Mother and son who had been in a motorcycle accident. Karla will verify this.

#### Unfair hiring and scheduling practices

Seasonal associates hired after me who received 32-40 hours when I was given zero hours can confirm their three-week posted schedules during this period.

Sarah McIlvray, an 18-year old I mentored, who worked for an OLAG vendor, will confirm that Nestor "pestered" her repeatedly to apply for employment at Lowe's OLAG as a seasonal sales associate or cashier.

Damian at the store confirmed October 12, 2020 that Lowe's is hiring **a new full-time associate** in OLAG.

At my review, I informed Nestor that I would be happy to learn to operate the forklift and the register. Giving me zero hours on the schedule does not provide the opportunity to learn either skill.

Nestor and Angela were aware that I have a titanium plate in my left foot from a childhood accident when a city bus hit me while I was riding my bicycle. I communicated with Nestor that my titanium plate made going up and down on ladders challenging but I was getting used to it. They were also aware that I had carpal tunnel surgery on my right wrist and that I was able to lift 25 lbs. of soil and up to six or eight bags of mulch, but the 25 that Nestor made me load into a customer's vehicle in October 2020 had my wrist throbbing for several days.

#### **Harassment from four fellow associates**

I put in writing to Lowe's management and to corporate HR the four associates who were verbally abusive and confrontational – Gary, Jake, Pamela P and Andrew. I also spoke in person to ASM Chris.

Nothing was done.

#### **Disregard for safety issues**

Last but not least, two months after I pointed out the safety issue for our customers and associates about petroleum based rubber mulch on top shelf; the two pallets remained there when I left OLAG October 12, 2020.

#### **Paper trail of outstanding customer reviews**

I can scroll through my personal phone and computer for emails and texts from more than 150 delighted Lowe's OLAG customers. The numerous customers who posted positive reviews on their store receipts will also validate exceptional customer service and plant knowledge.

Here are the phone numbers of customers I helped in my last two days at Lowe's that wanted to post Yelp reviews about outstanding customer service. Their comments were especially heartwarming since my right arm was swollen and discolored from the spider bite.

These Lowe's customers will tell it like it is:

Suny? - 843-597-1182 – her family relocated to a rental in Talega six weeks before I joined Lowe's. She has purchased at least \$5000 in plants since.

Diane – realtor – had a \$200 budget to stage the house she is helping her client sell. She purchased \$450 plus in plants today and is returning for Plumbago and other perennials for her own garden.

Sheryl – moved to SC from Marin County, CA in June -925-785-1344. Helped her with \$6000 in plants, pots and fertilizers for her new home in Talega. She

brought her daughter in and the daughter spent \$2300. Sheryl has been texting me about my schedule so I can help her, her daughter and son with their gardens.

Lowe's employees appear to be afraid to tell the truth. Two Lowe's OLAG associates told customers, "Freda is seasonal and no longer works here." Two others told her "Freda has a family emergency and we don't know when she will be back." One cashier offered to find another garden associate to help.

It is my hope that this bizarre experience at Lowe's 1050 in San Clemente demonstrates that the company's stated values and various training and safety videos -- especially about discrimination, harassment, voicing concerns and putting forth ideas for improvement are mostly ignored.

From what I've learned Nestor believes that his "team" ideal means robot-like, minimum wage workers who check in plant stock -- diseased or not - from new deliveries; pull product from top shelf or the back yard, sweep the floor, and return "go backs." That's perhaps why 6 of the "seasonal" employees left.

Does Lowe's not recognize that so many professionals who retired early have so much to contribute to Lowe's infrastructure and its customers?

Nine former Lowe's employees are at DeNault Hardware and other local stores. They speak volumes about their experiences at Lowes 1050. They are all aged 50+.

Freda DSouza  
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